

COPY

NO. 22766

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SOLOMISSEY JESSY,

APPELLANT,

vs.

THE SUPERIOR COURT OF CALIFORNIA
AND LOS ANGELES COUNTY,

APPELLEES.

APPELLEES' BRIEF

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IN THE
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SOLOMISSEY JESSY,

Appellant,

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COUNTY,

Appellees.

NO. 22766

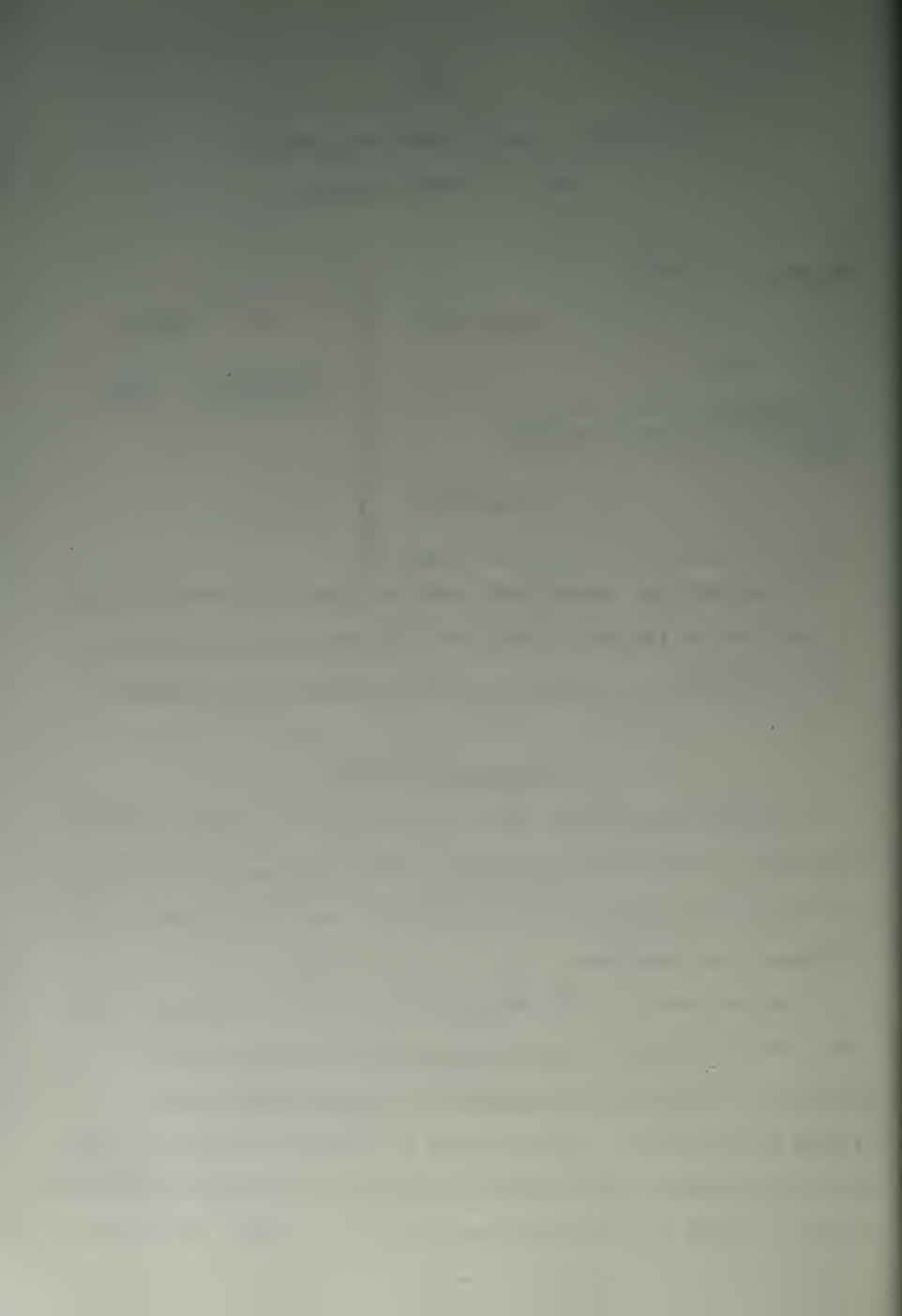
APPELLEES' BRIEF

COME NOW the appellees, THE SUPERIOR COURT OF THE STATE
OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES and THE COUNTY
OF LOS ANGELES, and present herewith their brief on appeal:

STATEMENT OF CASE

Although appellant has a portion of her brief labeled
Statement of the Case (pp. 2-4), the appellees believe it is
necessary, for the purpose of clarity, to also submit a brief
statement of the case.

On October 2, 1967 the appellant filed a document with
the United States District Court, Central District of
California, labeled "Complaint for Damages for Fraud"
(page 2 of record). On November 1, 1967 the appellees, ap-
parently named as defendants in the above purported claim for
relief, filed a motion in that court to dis~~miss~~ the docu~~ment~~.



The court granted the Motion to Dismiss but allowed the appellant leave to amend her document (page 11 of record).

On January 2, 1968 the appellant filed a document with that same court entitled "Amended Complaint" (page 6 of record). On January 11, 1968 the appellees filed a Motion to Dismiss the "Amended Complaint" (page 13 of record). The court granted the Motion to Dismiss the First Amended Complaint (page 23 of record). In dismissing the First Amended Complaint the court found: that the plaintiff was a defendant in a criminal action pending in the Superior Court of the State of California for the County of Los Angeles in approximately July of 1959, but that the said action was dismissed; that the plaintiff was a defendant in a criminal action pending in the Superior Court of the State of California for the County of Los Angeles in the year 1944, and was prosecuted in that criminal action by the District Attorney of the County of Los Angeles; that the plaintiff was imprisoned as a result of the aforementioned criminal prosecution which occurred in the year 1944 (see page 20 of record).

This Judgment of Dismissal of the First Amended Complaint (page 23 of record) was appealed from by the appellant (page 25 of record). In all proceedings on record in the District Court the appellant elected to appear in propria persona.

The appellees respectfully submit the issue before this

/

court is whether the Judgment of Dismissal of the First Amended Complaint was properly granted.

ARGUMENT OF CASE

The Judgment of Dismissal of the First Amended Complaint entered by the District Court in favor of appellees was correct and proper in that the First Amended Complaint failed to state a claim upon which relief could be granted. The District Court's action should be sustained on either of the following grounds:

I

THE FIRST AMENDED COMPLAINT IS UNINTELLIGIBLE AND STATES NO RECOGNIZABLE CLAIM TO RELIEF AGAINST APPELLEES.

The appellees are unable to understand the import of the amended complaint. The document appears to consist of a series of arguments and conclusions all of which are unintelligible. Appellees are unable to extract any factual material from the First Amended Complaint in order to proceed.

As to the appellee, County of Los Angeles, the First Amended Complaint alleges that the District Attorney was involved in the imprisonment of the appellant. It also alleges that at certain times the Public Defender represented the appellant. The First Amended Complaint fails to allege in that manner, if any, the County of Los Angeles or its agents acted illegally in affecting the appellant's rights. Further, apparently the appellee and the appellees' agents were acting



in a judicial or quasi-judicial capacity in all of the intelligible events related by appellant and suit would not lie against them in any event. Harrison v. Superior Court (9th Cir. 1964) 329 F.2d 154.

As to the appellee the Superior Court of the State of California for the County of Los Angeles, the court and its judges are immune to suits for damages for actions taken within their jurisdiction. Larson v. Gibson (9th Cir. 1959) 267 F.2d 386. Johnson v. McCoy (9th Cir. 1960) 278 F.2d 37. Renew v. Moody (9th Cir. 1964) 330 F.2d 868. Sires v. Cole (9th Cir. 1963) 320 F.2d 877. Harrison v. Superior Court (9th Cir. 1964) 329 F.2d 154, 155.

If appellant is attempting to state a claim to relief for fraud by her Amended Complaint then the appellees are unable to find any facts to support such a claim. Further, any circumstances constituting fraud must be particularly stated. Federal Rules of Civil Procedure, Rule 9(b), 28 U.S.C.A.

II

NO CLAIM TO RELIEF IS STATED BY THE AMENDED COMPLAINT IN THAT IT IS BARRED BY THE STATUTE OF LIMITATIONS.

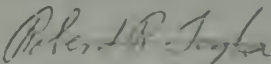
The amended complaint shows that the last overt act that could have possibly been committed by the appellees would have been on July 20, 1959 (page 4 of "Amended Complaint"). Since well over eight years elapsed before the appellant filed her "complaint" in November of 1967, any action against the appellees would be barred by the applicable statute of

imitations. California Code of Civil Procedure, §338(1) provides that an action, other than for the recovery of real property, must be commenced within three years if there is an action upon a liability created by statute other than a penalty or forfeiture.

Assuming this is an action brought under the Civil Rights Act, 42 U.S.C.A. §§1983, 1985, it is settled law that in respect to any action brought on the ground of deprivation of Civil Rights in a Federal District Court having its situs in California, the statute of limitations is three years in that this limitation period commences to run in respect to any particular defendant from the date of the last overt act attributed to that defendant. Lambert v. Conrad (9th Cir. 1962) 308 F.2d 571. Smith v. Cremins (9th Cir. 1962) 308 F.2d 187.

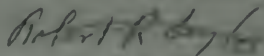
Respectfully submitted,

JOHN D. MAHARG,
County Counsel

By 
Robert R. Taylor
Deputy County Counsel

CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19, and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.



ROBERT H. TAYLOR,
Deputy County Counsel
County of Los Angeles.



AFFIDAVIT OF SERVICE BY MAIL

County of Los Angeles }
State of California } ss.

Beulah Moy being first duly sworn, deposes and says:

That affiant is and was at all times herein mentioned a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that affiant's business is 648 Hall of Administration, City of Los Angeles, County of Los Angeles, State of California;

That on the 5th day of June, 1968, affiant served the attached APPELLEES' BRIEF upon Solomissey Jessy by depositing a copy thereof, enclosed in a sealed envelope with postage hereon fully prepaid, in a United States mail box in Los Angeles, California, addressed as follows:

Solomissey Jessy
1967 1/2 South Raymond Avenue
Los Angeles, California 90007

and that the person on whom said service was made resides at a place where there is a delivery service by United States mail, and that there is a regular communication by mail between the place of mailing and the place so addressed.

SUBSCRIBED AND SWORN to before me

this 5th day of June, 1968.

WILLIAM G. SHARP, County Clerk,

By Mary S. Bane
Deputy

Beulah Moy

